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August 7, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

ORIGINAL

Re: CC Docket No. 96-115 -- Telecommunications Carriers' Use of Customer
Proprietary Network Information (CPNI); *Ex Parte*

Dear Chairman Kennard:

In recent meetings with Mr. Tom Power of your staff, with Legal Advisers to three of the other four Commissioners, and with representatives of the Common Carrier Bureau, as well as in pleadings seeking reconsideration of certain aspects of the *Second Report and Order* in the above-referenced CPNI proceeding, BellSouth has urged the Commission on its own motion to issue an interim stay of the electronic flagging and audit requirements adopted in that *Order*, pending reconsideration. These requirements impose substantial costs and other resource burdens on individual carriers and the industry as a whole -- far greater than apparently anticipated by the Commission in the *Order* -- with little or no attendant benefit that cannot be attained through less burdensome means. Accordingly, BellSouth and other individual carriers,¹ together with multiple trade organizations representing the overwhelming majority of the entire telecommunications industry,² have asked the Commission to minimize or to avoid carrier exposure to needless waste of resources by staying the January 26, 1999, effective date for these electronic safeguard requirements until the Commission has reconsidered these requirements on their merits.

¹ See, e.g., Letter from Darlene Richeson, Director of Regulatory and Legislative Policy Matters, GTE Service Corporation to William E. Kennard, Chairman, FCC (filed August 3, 1998) ("GTE *Ex Parte* Letter"); AirTouch Communications *Ex Parte* submission (August 4, 1998) ("AirTouch *Ex Parte*"); Ameritech Reply Comments, CC Docket No. 96-115 (filed July 8, 1998).

² See, Letter to Chairman Kennard, Commissioner Powell, Commissioner Tristani, Commissioner Ness, and Commissioner Furchtgott-Roth from PCIA, USTA, CTIA, CompTel, OPASTCO, NRTA, Small Business in Telecommunications, ITTA, ACTA, and NTCA, CC Docket No. 96-115 (filed July 20, 1998).

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The flagging requirement obligates all carriers to implement software in their mechanized systems containing CPNI that will "flag" each individual customer's records to indicate whether the customer has given the carrier express permission to use CPNI for purposes beyond those for which inferred approval is sufficient. These flags are required to appear in the "first screen" presented to users of these systems. The electronic audit requirement similarly obligates all carriers to implement software mechanisms for tracking user access to customer accounts, specifically including details of when a customer's record has been opened, by whom, and for what purpose. Further, these detailed "contact histories" must be retained for at least one year.

Carriers seeking reconsideration of these requirements have shown cost burdens of consistent orders of relative magnitude. Large carriers with hundreds of potentially affected systems have projected economic costs of tens or even hundreds of millions of dollars for the requisite systems modifications and ongoing data storage capacity.³ Smaller carriers have estimated their costs to reach \$100 per customer line.⁴ Carriers of all sizes have also expressed concern over the drain of IT expertise and resources that implementation of the flagging and audit requirements will impose on other important IT-intensive projects, such as Y2K compliance and local number portability implementation.

BellSouth is submitting this letter to supplement those showings in response to various general inquiries and discussion points that arose in the afore-mentioned meetings with Commission staff. In particular, the Bureau requested more information regarding the cost impacts of the Commission's requirement, including a breakdown where possible between costs associated with the flagging requirement and those associated with the audit requirement. In addition, because BellSouth was explaining how the *Order's* requirements affect both BellSouth's wireline operations and its wireless companies, the latter having never been subject to any CPNI rules in the past, the Bureau at least implicitly also suggested a breakdown between systems supporting the two types of business activities. Finally, the Bureau asked for estimated costs of implementation of the requirements on systems presently slated for retirement or replacement within a year of the present effective date of the requirements.

As BellSouth explained in its meetings, one of the problems with quantifying the precise dollar cost of implementation lies in the difficulty of ascertaining the scope of the Commission's requirements. A most literal reading of the requirements, as expressed in both the *Order* and the accompanying Rules, would suggest that *any* system that contains CPNI or through which CPNI may be accessed is subject to the electronic safeguard requirements. Such a reading lay at the

³ See, e.g., AT&T Petition for Reconsideration, at 12, CC Docket No. 96-115 (filed May 26, 1998).

⁴ See, e.g., NTCA Petition for Reconsideration, at 8-10, CC Docket No. 96-115 (filed May 26, 1998).

heart of at least one carrier's cost projections of over \$1 billion per year for data storage associated with the electronic audit requirement alone.⁵ Recognition of the plausibility of such a reading also influenced BellSouth's original projections that its costs over a five-year period could easily exceed \$75 million.

Indeed, the only implicit limitation on such a reading reflected in the *Order* is the Commission's stated expectation that its requirements would not be "overly burdensome."⁶ In between this stated expectation and the materially conflicting literal interpretation, however, carriers are left with little insight from the *Order* as to the actual scope of the requirements. Even following its meetings with Commission staff, BellSouth has no more precise understanding of exactly what is required, although BellSouth derives some modicum of comfort from inferences it has drawn from those meetings (rightly or wrongly) that the Commission did not intend its requirements to be implemented in their most literal sense.

On the basis of these inferences, BellSouth has focused its efforts in developing more granular cost projections on roughly 100 systems of general use in routine support of, or accessible by individuals generally engaged in, marketing and sales or similar customer contact activities. Another 500 systems of more specialized use outside of direct marketing and sales activity have yet to be reviewed in the same detail. As shown below, however, even with this more targeted focus, the costs of implementing the electronic flagging and audit requirements are still projected to reach tens of millions of dollars for BellSouth companies alone⁷ -- far in excess of the \$700 thousand range that formed the implicit basis of the Commission perception of the likely burden of its requirements.⁸

Specifically, through its current review of the 100 systems noted, BellSouth projects overall costs to approach \$25 million for systems development and data storage over a five-year

⁵ MCI Petition for Reconsideration, at 37-38, CC Docket No. 96-115 (filed May 26, 1998).

⁶ *Second Report and Order*, at ¶ 198, 199.

⁷ Another complexity in quantifying projected system modification costs lies in the cost of developing the estimates themselves. That is, in order to develop firm project costs, systems engineers must first develop sufficiently detailed systems specifications from which programmers can estimate their costs, much as an architect must develop detailed building design specifications before construction costs can be ascertained. As a general rule of thumb, IT system design specification costs run from ten to fifteen percent of project costs. Although BellSouth has yet to expend the several million dollars necessary to develop detailed system specifications, its projections reflect informed estimates based on the requirements and the systems involved -- again, much like initial construction cost estimates may be developed from generalized square footage costs for certain styles of buildings and building materials.

⁸ *Second Report and Order* at n. 687.

period. Of this figure, \$10 million would be needed for the flagging requirement, \$12.5 million for the audit tracking mechanism itself, and over \$2 million for storage of audit trail data.⁹ Moreover, of these figures, roughly 15% is attributable to BellSouth's wireless operations (*i.e.*, approximately \$1.5 million for flagging, \$1.5 million for tracking, and over \$.5 million for storage).

Additionally, BellSouth explained that some of these apparently requisite expenditures would be incurred for systems that are presently scheduled for retirement or replacement within one year of the effective date of the flagging and audit requirements. Specifically, on its wireless side, BellSouth has identified two systems and their associated interfaces slated for retirement by mid-year 1999. The current compliance costs for these systems would reach \$900 thousand. Further, an additional \$830 thousand would be spent for development of compliance capabilities for the new replacement systems. BellSouth's wireline operations have similarly identified \$1.1 million that would be spent on systems whose planned remaining lives are less than one year from the present effective date.

As previously indicated, of course, monetary resources are not the only resources to be consumed by the implementation of the present electronic safeguards requirements. Of equal import is the drain those requirements will impose on BellSouth's IT resources. BellSouth's projects that compliance efforts will require over 130,000 person-hours of dedicated IT labor at a time when those very personnel are already burdened with other massive projects. Moreover, as GTE recently noted, the external labor market for additional IT resources is extremely tight.¹⁰

⁹ These data tracking and storage cost estimates are perhaps low compared to other carriers' projections, *compare, e.g.*, GTE *Ex Parte* Letter, at 1, (projecting \$16 million for audit development costs and another \$13 million for "on-going maintenance"), because of an assessment by BellSouth that its wireline local exchange company's primary customer service system, CRIS, already does generate and maintain certain usage tracking data sufficient to meet the Commission's requirement, although the "purpose" of such usage must be inferred from a combination of a user's ID number and a record of the sites visited by the user (*e.g.*, a record showing access to a customer's billing records by a user whose ID indicates the user has customer service responsibilities would indicate that the purpose of the access was related to a billing inquiry). To the extent these capabilities of this system are deemed not to satisfy the audit tracking requirement, the costs of developing additional tracking and storage capabilities for this system will increase BellSouth's cost projections materially. Moreover, BellSouth cautions the Commission not to draw an inference that merely because CRIS has these capabilities that any other of BellSouth's systems (for its wireline or wireless companies) or the systems of any other carriers have, or could easily be made to have, comparable capabilities.

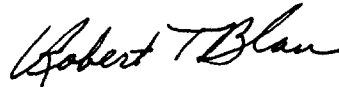
¹⁰ GTE *Ex Parte* Letter, at 2.

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That all of these expenditures and resource commitments are overly burdensome and unnecessary is a matter presently before the Commission on reconsideration. BellSouth is confident that upon such further consideration on their merits, the Commission will conclude that the costs of the electronic flagging and audit requirements substantially outweigh their purported benefits. That there is a reasonable likelihood that the Commission will reach such a conclusion on reconsideration serves only to underscore the importance of granting a stay *now*, to avoid such needless expenditures in the short run.

BellSouth appreciates the Commission's prompt consideration of this matter.

Sincerely,

A handwritten signature in cursive script, reading "Robert T. Blau".

Robert T. Blau

cc: The Honorable Harold Furchtgott-Roth
The Honorable Susan Ness
The Honorable Michael Powell
The Honorable Gloria Tristani
Ms. Kathryn C. Brown, Chief, Common Carrier Bureau
Mr. Dan Phythyon, Chief, Wireless Telecommunications Bureau
Mr. Thomas Power, Legal Adviser, Office of the Chairman
Mr. James Casserly, Senior Legal Adviser, Office of Commissioner Ness
Mr. Kevin Martin, Legal Adviser, Office of Commissioner Furchtgott-Roth
Mr. Kyle Dixon, Legal Adviser, Office of Commissioner Powell
Mr. Paul Gallant, Legal Adviser, Office of Commissioner Tristani
Ms. Carol Matthey, Chief-Policy Division, Common Carrier Bureau
Mr. Brent Olson, Attorney, Policy Division, Common Carrier Bureau
FCC Secretary's Office